

EXHIBIT 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JEFFREY MOLNAR, WESLEY
THORNTON, AILEEN MARTINEZ,
CHIQUITA BELL, TEYIA BOLDEN, and
ANTOINETTE STANSBERRY
individually and on behalf of all others
similarly situated,

Plaintiffs,

V.

**NCO FINANCIAL SYSTEMS, INC., a
Pennsylvania Corporation,**

Defendant.

Case No. 3:13-cv-00131-BAS-JLB

**RULE 26(a)(2) EXPERT
DISCLOSURE, WRITTEN REPORT,
AND DECLARATION OF
JEFFREY A. HANSEN**

DECLARATION OF JEFFREY A. HANSEN

1. I, Jeffrey A. Hansen, hereby declare as follows:

2. My name is Jeffrey A. Hansen. I am an adult over the age of 18, a resident of the state of California, and I reside at 2625 Kings View Circle, Spring Valley, CA 91977. Unless indicated otherwise, I have personal knowledge of each of the matters stated herein, and if called to testify I could and would testify competently about them.

3. I was asked to prepare this declaration by Plaintiffs' counsel in the above-captioned matter, Law Offices of Ronald A. Marron, Law Offices of Douglas J. Campion, APC, Edelson PC, and Keogh Law, Ltd., in support of Plaintiffs' anticipated motion for class certification.

4. I have been retained in this case at a rate of \$300 per hour, for all services rendered, and \$380 per hour for depositions.

Experience and Credentials.

5. I am the principal of Hansen Legal Technologies, Inc. My firm is in the business of handling Information Technology, including investigations and analysis of electronic data. I have served as an expert or consultant in more than 50 TCPA class action lawsuits, and as an expert or consultant in numerous other civil cases.

6. With regard to my experience as an expert and consultant in legal matters, generally, I have frequently served as an expert witness and consultant to law firms in conducting computer forensic analyses. I have also assisted in electronic discovery issues.

7. Specific to this case, my firm was retained to assist Plaintiffs and their counsel in evaluating and analyzing electronic data related to outbound calls and other electronic data associated with computer systems and/or telephone dialing systems that may have been used by Defendant NCO Financial Systems, Inc. (“NCO”) and/or its agents. In that respect, I have extensive experience with data warehousing, including data warehousing related to telemarketing and autodialers in general. I am familiar with

1 the procedures involved in such practices, and I have personally engaged in data
2 warehousing regarding the compilation of certain lists, including demographic and
3 target audience lists for telemarketing, and have personally repaired defective lists to
4 eliminate improperly formatted and corrupted data.

5 8. I also frequently act as a consultant to companies that engage in the use of
6 autodialers, and I am familiar with their use and procedures, and the technical aspects of
7 that business. In that capacity, I have assembled, configured, maintained and operated
8 all aspects of autodialers, and interfaced with the telecommunications providers through
9 whose networks the autodialers operate.

10 9. I have set up and maintained all aspects of predictive dialers and
11 autodialers, from predictive dialers operating with just three telephone lines to outbound
12 call centers with over 1,000 phone lines. When building these systems, I have used
13 various software and hardware solutions for predictive and autodialers, both proprietary
14 and open source, and customized those systems for their particular uses. I myself have
15 used and maintained predictive and autodialers, and trained others to do the same.

16 10. Further, I am familiar with the manner in which outbound dial lists are
17 used and maintained in the telemarketing industry, which I understand to be similar to
18 the debt collection industry in which NCO operates. Similarly, I am familiar and have
19 experience with, and know how to use, databases containing cell block identifiers and
20 ported number lists, both of which identify cellular type telephone numbers and are
21 typically used in these industries.

22 11. Over the last twenty-four (24) years, I have also had extensive experience
23 in a broad range of other areas in the electronic and information technology fields and
24 obtained many certifications such as MCP 4.0, A+, Network+, MCP 2000, MCSA,
25 MCSE, Linux+, I-Net+, Security+, CIW Security Analyst. From the hardware
26 perspective, I have extensive experience in troubleshooting and repairing at the
27 component level, and building various systems for various purposes. I have designed,
28

1 built and maintained computer networks in a variety of environments from commercial
2 businesses to very large DoD networks. I have taught approximately 1,000 others the
3 skills to become network engineers themselves. I have had extensive experience in
4 dealing with security breaches and hardening computer networks against those
5 breaches. I have handled many computer forensic and E-Discovery matters, including
6 internal investigations in companies, working at the FBI sponsored Regional Computer
7 Forensics Laboratory, and founding a computer forensics and E-Discovery firm over 6
8 years ago. I have also had extensive experience with the set-up and use of predictive
9 and auto dialers. (See Exhibit A – Resume of Jeffrey A. Hansen).

10 12. I have been called to testify in the following civil matters: *Craig Casey v.*
11 *Valley Center Insurance Agency Inc.*, Case No. 37-2008-00004378-SC-SC-CTL (San
12 Diego Superior Court); *Stemple v. QC Holdings*, Case No. 12-CV-1997-CAB-WVG
13 (S.D. Cal.); *Hahn v. Massage Envy Franchising*, Case No. 3:12-cv-00153-DMS-BGS
14 (S.D. Cal.); *Abdeljalil v. Gen. Electric Capital Corp.*, Case No. 12-cv-02078-JAH-
15 MDD (S.D. Cal.); *Jasminda Webb v. Healthcare Revenue Recovery Group, LLC*, Case
16 No. C 13-0737 JD (N.D. Cal.); and, *Amanda Balschmiter v. TD Auto Finance, LLC*,
17 Case No. 2:13-cv-01186 (E.D. Wisc.).

18 19 *Work and Analyses in this Case Regarding NCO's Use of Automatic Telephone*
20 *Dialing Systems.*

21 22 13. I have reviewed various documents and evidence from this case relating to
23 NCO's placement of telephone calls to Plaintiffs' cellular telephones and those of the
24 putative class. Specifically, I have reviewed the following documents: 1) Exhibit B -
25 FCC Order 03-153; 2) Exhibit C - Genesys website for their soundbite dialer; 3) Exhibit
D - Aspect Unison Predictive Dialer Product Overview; 4) [REDACTED]
26 [REDACTED]; 5) [REDACTED]
27 [REDACTED]; 6) [REDACTED]
28 [REDACTED]; 7) [REDACTED]

1 [REDACTED]
2 [REDACTED]; 8) [REDACTED]
3 [REDACTED]; 9) [REDACTED]
4 [REDACTED] 10) L [REDACTED]
5 [REDACTED]; 11) [REDACTED]
6 [REDACTED]; 12) [REDACTED]
7 [REDACTED]; 13) [REDACTED]
8 [REDACTED]; 14) [REDACTED]
9 [REDACTED]; 15) [REDACTED]
10 [REDACTED] and 16) [REDACTED]
11 [REDACTED].
12 [REDACTED].

13 14. Based upon the documents and evidence I have reviewed, all the calls at
14 issue that were made to Plaintiffs and the putative class were made exclusively using a
15 group of dialing systems. Those systems are [REDACTED]
16 [REDACTED]. As
17 explained further below, in my expert opinion, each of these dialing systems satisfies
18 the requirements of an “automatic telephone dialing system” (“ATDS”) as defined by
19 the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”).

20 15. [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26
27 _____

¹ In industry parlance, a “campaign” is calling a list of phone numbers organized by some predefined criteria for a specific purpose.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED];
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED] [REDACTED]
17 [REDACTED]
18 16. [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 _____
28

² A “pool” is, like a campaign, in that it is calling a list of phone numbers organized by some predefined criteria for a specific purpose.

1 17. Like [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED])
11
12 18. [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24
25 19. After reviewing the above documents, and based on my experience with
26 predictive dialers and autodialers, I am of the opinion that NCO used a number of
27 Automated Telephone Dialing Systems to place telephone calls to Plaintiffs and all of
28 the putative class members, or more specifically, that the characteristics of each of
NCO's telephone dialing systems described above meet the definition of equipment that

1 has the capacity to store or produce numbers to be called, using a random or sequential
 2 number generator, and the capacity to call such numbers. Specifically, the dialers call
 3 numbers that are stored as a list, which itself is stored in a table of a database. While
 4 NCO's telephone dialing systems do have the ability to send agent-less pre-
 5 recorded/artificial voice messages, their primary function is a predictive dialer.

6 20. Predictive dialers all work under the same guiding principle: they transfer
 7 telephone numbers to be called to a list or "campaign." This list of numbers is then
 8 dialed without human intervention. The calls are made, using multiple telephone lines,
 9 in advance of being connected to a live operator. Using a complex computer algorithm,
 10 the dialing system will "predict" how far in advance to make the calls in attempt to
 11 prevent time wasted in listening to rings, answering machines, disconnected phone
 12 numbers and calls that are not answered.

13 21. The fact that NCO's dialers place calls to numbers stored by NCO's
 14 dialing systems and deliver predictively dialed calls indicates that NCO's dialers meet
 15 the definition of an ATDS, as it relates to predictive dialers, as clarified in the Federal
 16 Communications Commission's ("FCC") 2003 Order:

17 The record demonstrates that a predictive dialer is equipment that
 18 dials numbers and, when certain computer software is attached, also
 19 assists telemarketers in predicting when a sales agent will be
 20 available to take calls. The hardware, when paired with certain
 21 software, has the capacity to store or produce numbers and dial those
 22 numbers at random, in sequential order, or from a database of
 23 numbers... The principal feature of predictive dialing software is a
 24 timing function, not number storage or generation. ...[T]hese
 25 machines are not conceptually different from dialing machines
 26 without the predictive computer program attached."

27

28 [I]n order to be considered an 'automatic telephone dialing system,'
 29 the equipment need only have the '*capacity* to store or produce
 30 telephone numbers (emphasis added). . . . ' ...In the past, telemarketers
 31 may have used dialing equipment to create and dial 10-digit
 32 telephone numbers arbitrarily. ...the evolution of the teleservices

1 industry has progressed to the point where using lists of numbers is
 2 far more cost effective. The basic function of such equipment,
 3 however, has not changed—the capacity to dial numbers without
 4 human intervention.

5

6 [T]o exclude from these restrictions equipment that use predictive
 7 dialing software from the definition of 'automated telephone dialing
 8 equipment' simply because it relies on a given set of numbers would
 9 lead to an unintended result. We believe the purpose of the
 10 requirement that equipment have the 'capacity to store or produce
 11 telephone numbers to be called' is to ensure that the prohibition on
 12 autodialed calls not be circumvented. Therefore, the Commission
 13 finds that a predictive dialer falls within the meaning and statutory
 14 definition of 'automatic telephone dialing equipment' and the intent
 15 of Congress.

16 (Exhibit B – FCC Order 03-153 ¶¶ 131-134 (finding that a predictive dialer falls within
 17 the TCPA's definition of "automatic telephone dialing system").)

18 22. In 2008, a consortium of debt collectors petitioned the FCC to reconsider
 19 its 2003 Order. In response, the FCC affirmed the 2003 Order. *See In the Matter of*
 20 *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991,*
 21 *Request of ACA International for Clarification and Declaratory Ruling*, CG Docket No.
 22 02-278, FCC Docket No. 07-232.

23 23. Additionally, the properties of NCO's dialing systems meet the definition
 24 of an ATDS as further clarified by FCC Order 12-56, wherein, the FCC stated:
 25

26 Under the TCPA, the term "automatic telephone dialing system" is
 27 defined as "equipment which has the capacity (A) to store or produce
 28 telephone numbers to be called, using a random or sequential number
 29 generator; and (B) to dial such numbers." *Id.* at § 227(a)(1). The
 30 Commission has emphasized that this definition covers any
 31 equipment that has the specified capacity to generate numbers and
 32 dial them without human intervention whether or not the numbers
 33 called are randomly or sequentially generated or come from calling
 34 lists.

1 *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991,*
 2 CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 at 14092 ¶ 133 (2003).

3 24. Thus, in my expert opinion, the dialing systems NCO used (as outlined
 4 above) each constitute an ATDS as contemplated by the TCPA and clarified by the
 5 FCC, because they have the capacity to either call numbers stored or to call numbers
 6 generated by a number generator:

7 The TCPA defines an “automatic telephone dialing system” as
 8 “equipment which has the capacity (A) to store or produce telephone
 9 numbers to be called, using a random or sequential number generator;
 10 and (B) to dial such numbers.” The statutory definition contemplates
 11 autodialing equipment that either stores or produces numbers. It also
 12 provides that, in order to be considered an “automatic telephone
 13 dialing system,” the equipment need only have “the *capacity* to store
 14 or produce telephone numbers (emphasis added)....”

15 25. (See Exhibit B - FCC Order 03-153 at p. 78).

16 26. Those FCC orders and rulings provide me with the information that assists
 17 me in forming an opinion about whether NCO’s dialers satisfy the definition of an
 18 ATDS. Based on those orders and rulings, and based upon my review of the documents
 19 and evidence provided in this case, it is also my expert opinion that all of the calls made
 20 to Plaintiffs and the putative class in this case were made using automated telephone
 21 dialing systems.

22 Additional Work and Analyses, Including Identification of Cellular Phone
 23 Numbers Called.

24 27. In addition to identifying and analyzing the technology used to make the
 25 calls at issue in this case, I have been retained to examine the methodology and
 26 procedures used in gathering and assembling the data provided by NCO.

27 28. I will also be examining any outbound dialing lists produced by the NCO
 28 and identifying all of the cellular telephone numbers contained on those lists and called
 29 within the relevant time period. If I were provided a list of all the telephone numbers
 30 called by NCO’s dialing systems, along with the phone number and date columns

1 included in any such lists, exported from NCO dialers, in a non-proprietary format
2 (specifically a comma delimited text file with quotation qualifiers – CSV), I would be
3 able to determine the total number of calls made during the relevant period of time, the
4 total number of calls to cellular telephone numbers, and the total number of unique
5 cellular telephone numbers called.

6 29. Additionally, I will be examining future discovery responses and will be
7 formulating additional expert opinions on the topics raised in those discovery responses
8 as requested and appropriate.

9 *Amendments and Modifications.*

10 30. I reserve the right to amend, modify or supplement the statements and
11 opinions set forth herein as appropriate.

12 *Exhibits.*

13 31. Attached hereto as Exhibit A is a true and accurate copy of the Resume of
14 Jeffrey A. Hansen.

15 32. Attached hereto as Exhibit B is a true and accurate copy of FCC Order 03-
16 153.

17 33. Attached hereto as Exhibit C is a true and accurate copy of the Genesys
18 website regarding the Soundbite predictive dialer, located at
19 <http://www.genesys.com/soundbite/collections-and-payments/hosted-contact-center>
20 (last visited August 15, 2014).

21 34. Attached hereto as Exhibit D is a true and accurate copy of the Aspect
22 Unison Predictive Dialer Product Overview.

23 I declare that the foregoing is true and correct, subject to the laws of perjury of
24 the United States. Executed in Spring Valley, CA on this 15th day of August 2014.

25
26
27
28



Jeffrey A. Hansen